UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WISCONSIN
MILWAUKEE DIVISION

JOHN E. PATTERSON
405 Summit Drive
West Bend, WI 53095

Plaintiff,

v.

Case No: 14-CV-1557

TRIANGLE TOOL CORPORATION
8609 W. Port Avenue
Milwaukee, WI 53224

JURY TRIAL DEMANDED

Defendant.

COMPLAINT

COMES NOW the Plaintiff, John E. Patterson, by his counsel, HEINS & MINKO LLC, by Attorneys Janet L. Heins, Mark Lee Snell, Nicholas J. DeStefanis, and Michael J. Gentry, as and for a claim against the Defendant, alleges and shows to the court as follows:

1. This court has jurisdiction over this matter pursuant to 28 U.S.C. § 1331, as this case involves a federal question under the Americans with Disabilities Act Amendments Act of 2008 ("ADAAA"), 42 U.S.C. § 12101 et seq., the Age Discrimination in Employment Act of 1967 ("ADEA"), 29 U.S.C. § 634 et seq., the Family & Medical Leave Act ("FMLA"), 29 U.S.C. § 2601 et seq., and the Employee Retirement Income Security Act ("ERISA"), 29 U.S.C. § 1001 et seq.

2. The unlawful employment practices giving rise to the Plaintiff's claims occurred within the Eastern District of Wisconsin, and venue is therefore proper in this District pursuant to 28 U.S.C § 1391(b), *inter alia*.

3. The Plaintiff, John E. Patterson, is an adult resident of the State of Wisconsin, residing at 405 Summit Drive, West Bend, Wisconsin 53095.

4. Defendant, Triangle Tool Corporation, was, at all times material herein, a domestic corporation with a principal office located at 8609 West Port Avenue, Milwaukee, Wisconsin 53224.

5. Plaintiff's date of birth is September 21, 1944.

6. On or around February 10, 1992, Defendant hired Plaintiff as a Polisher to work at its Milwaukee facility. Plaintiff held that position with Defendant until he was laid-off on February 11, 2013.

7. Plaintiff performed his duties as Polisher satisfactorily, and he received positive performance reviews over his tenure with Defendant.

8. Defendant gave its employees who were substantially younger than Plaintiff more raises during Plaintiff's tenure than it gave Plaintiff.

9. Defendant is a covered employer for purposes of the FMLA.

10. At all times material herein, Plaintiff worked at least 1250 hours per year for Defendant.

11. During Plaintiff's employment, he was not a "key employee" under the FMLA.

12. At all times material herein, Defendant employed at least 50 employees within 75 miles of Plaintiff's work site.

13. Plaintiff did not exceed the maximum amount of FMLA leave for any leave period.

14. Plaintiff was diagnosed with congestive heart failure in 1998; that same year he had his first bypass surgery performed. Plaintiff made Defendant aware of his condition and took sick

leave for his surgery at that time.

15. In 2008, Plaintiff had his second heart bypass surgery to treat his congestive heart failure along with follow-up treatment.

16. Defendant never offered Plaintiff FMLA leave for these absences.

17. At one point towards the end of Plaintiff's employment at Defendant, when Plaintiff reported to John Held, Defendant's Vice President, that he might need time off because he had sustained a workplace injury to his finger, Mr. Held told him that all that was wrong with his finger was Plaintiff's "old age."

18. In the last years of his employment, Mr. Held asked Plaintiff when he planned to retire around twice per year. Each time Plaintiff responded that he intended to continue working as long as he could.

19. On or around December 16, 2012, Plaintiff had to go to the emergency room to have fluid removed from his lung, a condition caused by his heart condition and accompanying medication.

20. Under doctor's orders, Plaintiff missed work from December 17 until January 14, 2013 as a result of his hospital stay and subsequent treatment. Defendant never offered Plaintiff FMLA leave for these absences.

21. Plaintiff provided notice to Defendant of his hospitalization on December 17, 2012, which was as soon as practicable after he was rushed to the emergency room the day before.

22. On or around January 9, 2013, Plaintiff called John Held, Defendant's Vice President, to inform him that his doctors had cleared him to return to work effective January 14, 2013. During this conversation, Held asked Plaintiff to come into the office one hour early on

January 14, 2013 to meet with him and Roy Luther, Defendant's Owner, about Plaintiff's retirement.

23. On or around January 14, 2013, Plaintiff met with Mr. Held and Mr. Luther. Mr. Luther told Plaintiff that he had missed 22 days due to illness in 2012 and had missed 12 days in 2013 due to illness and that this was unacceptable. After making this comment Mr. Held and Mr. Luther asked Plaintiff what his plans were for retiring. At the end of the conversation, Mr. Luther told Plaintiff that he would have six months to retire and that if he missed a single day of work due to illness he would be terminated in that six-month period.

24. On or around January 21, 2013, Mr. Held again asked Plaintiff if he and his wife had discussed Plaintiff retiring. Mr. Held went on to tell Plaintiff that he had done research related to placing his own father in a retirement home and that Plaintiff would have access to a lot of benefits as a senior citizen when he retires.

25. On or around January 23, 2013, Mr. Held again talked to Plaintiff about retiring. At that time, Mr. Held explained to Plaintiff the benefits available to senior citizens, such as free bus and taxi services, visiting nurse services, retirement communities and senior centers. Mr. Held finished the discussion by telling Plaintiff words to the effect that he should really "give it some thought."

26. On or around January 25, 2013, Mr. Held handed Complainant a handwritten note with the phone number for the Washington County Department for Aging and Disabilities and indicated that it was to help Plaintiff with retirement. Mr. Held also informed Plaintiff that he was not guaranteed the six months that Mr. Luther had discussed with him on January 14, 2013 and that he should really start working on retirement plans immediately. Plaintiff then informed Mr. Held

that he was not ready to retire and that his doctors had given him a clean bill of health. Mr. Held responded by telling Plaintiff that he needed to decide in the next week or two so that Mr. Held could make plans for a replacement.

27. On or around February 6, 2013, Mr. Held asked Plaintiff what his decision was concerning retirement and Plaintiff informed him that he was going to keep working. Mr. Held told him that that was not possible. Plaintiff said he felt healthy and wanted to keep working and Mr. Held responded, "That's how you felt in October, too, and then December happened […] you're getting old," or words to that effect.

28. On or around February 7, 2013, Mr. Held called Plaintiff and told him to take vacation days the rest of that week and that he would lay-off Plaintiff after he made his anniversary date of February 10, 2013.

29. On February 11, 2013, Defendant laid-off Plaintiff for "lack of work." Prior to that communication, Defendant had never before indicated to Plaintiff that it lacked work for Plaintiff. On information and belief, Defendant had work that Plaintiff could perform on and after February 11, 2013.

30. On information and belief, Defendant is self-insured for its employees' insurance plans. Accordingly, Defendant faces increased costs when its plan enrollees use health, dental, and other care that is covered by Defendant's insurance plans.

31. At all material times during Plaintiff's employment, he was a member of Defendant's self-insured health, dental, and weekly sickness and accident benefits insurance.

32. On information and belief, Defendant has disproportionately terminated or laid off other employees throughout Plaintiff's tenure who incurred expensive medical bills covered by

Defendant's self-insured plans.

33. On information and belief, in laying him off, Defendant acted with specific intent to retaliate against Plaintiff for using its insurance coverage under its self-funded insurance plans and to interfere with Plaintiff's future realization of those benefits, as Plaintiff's layoff ceased his benefits under those plans.

34. On March 12, 2013, Plaintiff filed an employment discrimination complaint against Defendant with the Wisconsin Equal Rights Division ("ERD"), designated as ERD Case No. CR201300628, and cross-filed with the U.S. Equal Employment Opportunity Commission ("EEOC") as EEOC Case No. 26G201300640CC. In the complaint, Plaintiff alleged that Defendant discriminated against him by laying him off on the basis of his age and disability.

35. The EEOC issued Plaintiff a Notice of Right to Sue for this case on November 24, 2014.

36. Plaintiff has exhausted all of his administrative remedies and has satisfied all conditions precedent to bringing this action.

FIRST CLAIM FOR RELIEF — FMLA INTERFERENCE

37. Plaintiff realleges and incorporates paragraphs 1- 36 of this complaint by reference.

38. Defendant intentionally interfered with Plaintiff's rights under the Family and Medical Leave Act of 1993, as amended, 29 U.S.C. § 2601 et seq, by refusing to provide him with protected leave under the FMLA.

39. As a result of Defendant's intentional violation of the FMLA, Plaintiff has suffered damages in the form of loss of wages and other employment benefits and insurance.

SECOND CLAIM FOR RELIEF — FMLA DISCRIMINATION

40. Plaintiff realleges and incorporates paragraphs 1- 39 of this complaint by reference.

41. Defendant intentionally retaliated against Plaintiff under the Family and Medical Leave Act of 1993, as amended, 29 U.S.C. § 2601 et seq, by laying him off for taking leave protected by the FMLA.

42. As a result of Defendant's intentional violation of the FMLA, Plaintiff has suffered damages in the form of loss of wages and other employment benefits and insurance.

THIRD CLAIM FOR RELIEF — ADAAA VIOLATIONS

43. Plaintiff realleges and incorporates paragraphs 1-42 of this complaint by reference.

44. Defendant intentionally discriminated against Plaintiff by laying him off on the basis of his disabilities in reckless disregard of his federally protected rights under the Americans with Disabilities Act Amendments Act of 2008, 42. U.S.C. 12101 et seq.

45. As a result of Defendant's intentional discrimination, Plaintiff has suffered damages in the form of pain and suffering, emotional distress, attorney fees and costs, and loss of wages.

FOURTH CLAIM FOR RELIEF - ADAAA FAILURE TO ACCOMMODATE

46. Plaintiff realleges and incorporated paragraphs 1-45 of this complaint by reference.

47. Defendant intentionally discriminated against Plaintiff by refusing to reasonably accommodate his disabilities in reckless disregard of his federally protected rights under the Americans with Disabilities Act Amendments Act of 2008, 42 U.S.C. 12101 et seq.

48. As a result of Defendant's intentional discrimination, Plaintiff has suffered damages

in the form of pain and suffering, emotional distress, attorney fees and costs, and loss of wages.

FIFTH CLAIM FOR RELIEF – AGE DISCRIMINATION

49. Plaintiff realleges and incorporated paragraphs 1-48 of this complaint by reference.

50. Defendant intentionally discriminated against Plaintiff on the basis of his age by laying him off in reckless disregard of his federally protected rights under the Age Discrimination in Employment Act of 1967, 29 U.S.C. § 634 et seq.

51. As a result of Defendant's intentional discrimination, Plaintiff has suffered damages in the form of attorney fees and costs and loss of wages and other employment benefits.

SIXTH CLAIM FOR RELIEF – ERISA § 510 RETALIATION

52. Plaintiff realleges and incorporated paragraphs 1-51 of this complaint by reference.

53. Defendant specifically intended to retaliate against Plaintiff for exercising his rights under Defendant's ERISA covered welfare plans and to interfere with Plaintiff's realization of future rights under those plans by laying him off, in violation of his federally protected rights under the Employee Retirement Income Security Act, 29 U.S.C. § 1001 et seq.

54. As a result of Defendant's intentional retaliation and interference, Plaintiff has suffered damages in the form of attorney fees and costs and loss of wages and other benefits.

WHEREFORE, Plaintiff respectfully requests that this Court:

1. Order Defendant to make Plaintiff whole by providing appropriate back pay, front pay, compensatory damages, punitive damages, liquidated damages, pre-judgment and post-

judgment interest, and reimbursement for other benefits and expenses in an amount to be shown at trial;

2. Grant to Plaintiff his attorney fees, costs and disbursements as provided by 29 U.S.C. § 2617(a)(3), 42 U.S.C. § 12205, and all other applicable statutes and provisions; and
3. Grant to Plaintiff whatever other relief this Court deems just and equitable.

PLAINTIFF DEMANDS A JURY OF TWELVE AS TO ALL TRIABLE ISSUES.

Dated this 16th day of December, 2014.

HEINS & MINKO LLC
Counsel for the Plaintiff

___s/Michael J. Gentry__________.
Michael J. Gentry, State Bar No. 1091204

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